

Message Text

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TO AMEMBASSY JIDDA
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AMEMBASSY CAIRO
AMEMBASSY DAMASCUS
AMCONSUL DHAHRAN
AMEMBASSY DOHA
AMEMBASSY KUWAIT
AMEMBASSY MANAMA
AMEMBASSY MUSCAT
USLO RIYADH
AMEMBASSY SANA
AMEMBASSY TRIPOLI

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E.O. 11652: N/A

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TAGS: ETRD, PFOR

SUBJECT: FOREIGN BOYCOTTS: FEDERAL REGISTER NOTICE
PROVIDING SUPPLEMENTARY INTERPRETATION OF EAA REGS

REF: A) JIDDA 2520 (NOTAL); B) JIDDA 1544 (NOTAL);
C) JIDDA 1499 (NOTAL); D) JIDDA 1521 (NOTAL)

1. FOLLOWING IS TEXT OF USDOC/INDUSTRY AND TRADE
ADMINISTRATION FEDERAL REGISTER NOTICE ISSUED APRIL L8

AND EXPECTED TO BE PUBLISHED ON APRIL 21 (TITLED PART 369-
RESTRICTIVE TRADE PRACTICES OR BOYCOTTS-INTERPRETATION).

BEGIN TEXT:

SUMMARY: THIS DOCUMENT SETS FORTH THE VIEWS OF THE
DEPARTMENT OF COMMERCE WITH RESPECT TO THE APPLICATION OF
THE FINAL REGULATIONS ON RESTRICTIVE TRADE PRACTICES OR
BOYCOTTS (43 F.R. 3508, JANUARY 25, 1978) TO CERTAIN CERTI-
FICATIONS WHICH SOME UNITED STATES PERSONS ARE BEING OR
MAY BE ASKED TO PROVIDE. IN ADDITION, IT SETS FORTH THE
DEPARTMENT'S VIEWS WITH RESPECT TO THE APPLICATION OF
THOSE REGULATIONS TO CERTAIN CONTRACTUAL CLAUSES TO WHICH
UNITED STATES PERSONS ARE BEING OR MAY BE ASKED TO AGREE.
SEE SUPPLEMENTARY INFORMATION.

FOR ADDITIONAL INFORMATION CONTACT: VINCENT J. ROCQUE,
TELEPHONE 202-377-3775 OR KENT N. KNOWLES, TELEPHONE
202-377-2512.

SUPPLEMENTARY INFORMATION: IT HAS COME TO THE DEPARTMENT'S
ATTENTION THAT SOME UNITED STATES PERSONS ARE BEING OR
MAY BE ASKED TO COMPLY WITH NEW BOYCOTTING COUNTRY
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REQUIREMENTS WITH RESPECT TO SHIPPING AND INSURANCE CERTI-
FICATIONS AND CERTIFICATES OF ORIGIN. IT HAS ALSO COME TO
THE DEPARTMENT'S ATTENTION THAT SOME UNITED STATES PERSONS
ARE BEING OR MAY BE ASKED TO AGREE TO NEW CONTRACTUAL
PROVISIONS IN CONNECTION WITH CERTAIN FOREIGN GOVERNMENT
OR FOREIGN GOVERNMENT AGENCY CONTRACTS. IN ORDER TO
MAXIMIZE ITS GUIDANCE WITH RESPECT TO TITLE I OF THE
EXPORT ADMINISTRATION AMENDMENTS OF 1977 (P.L. 95-52)
AND THE REGULATIONS ON RESTRICTIVE TRADE PRACTICES OR
BOYCOTTS, TITLE 15, CFR, PART 369 ("PART 369"), PUBLISHED
IN THE FEDERAL REGISTER OF JANUARY 25, 1978 (43 F.R. 3508),
THE DEPARTMENT HEREBY SETS FORTH ITS VIEWS ON THESE
CERTIFICATIONS AND CONTRACTUAL CLAUSES.

I. CERTIFICATIONS

SECTION 369.2(D) OF THE REGULATIONS PROHIBITS A UNITED
STATES PERSON FROM FURNISHING OR KNOWINGLY AGREEING TO
FURNISH:

"INFORMATION CONCERNING HIS OR ANY OTHER PERSON'S PAST,
PRESENT OR PROPOSED BUSINESS RELATIONSHIPS:

- (I) WITH OR IN A BOYCOTTED COUNTRY;
- (II) WITH ANY BUSINESS CONCERN ORGANIZED UNDER THE LAWS
OF A BOYCOTTED COUNTRY;
- (III) WITH ANY NATIONAL OR RESIDENT OF A BOYCOTTED

COUNTRY; OR

(IV) WITH ANY OTHER PERSON WHO IS KNOWN OR BELIEVED TO BE RESTRICTED FROM HAVING ANY BUSINESS RELATIONSHIP WITH OR IN A BOYCOTTING COUNTRY."

THIS PROHIBITION, LIKE ALL OTHERS UNDER PART 369, APPLIES ONLY WITH RESPECT TO A UNITED STATES PERSON'S ACTIVITIES IN THE INTERSTATE OR FOREIGN COMMERCE OF THE UNITED STATES AND ONLY WHEN SUCH ACTIVITIES ARE UNDERTAKEN WITH INTENT
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TO COMPLY WITH, FURTHER, OR SUPPORT AN UNSANCTIONED FOREIGN BOYCOTT. SECTION 369.2 (D)(5).

THIS PROHIBITION DOES NOT APPLY TO THE FURNISHING OF NORMAL BUSINESS INFORMATION IN A COMMERCIAL CONTEXT. SECTION 369.2(D)(3). NORMAL BUSINESS INFORMATION FURNISHED

IN A COMMERCIAL CONTEXT DOES NOT CEASE TO BE SUCH SIMPLY BECAUSE THE PARTY SOLICITING THE INFORMATION MAY BE A BOYCOTTING COUNTRY OR A NATIONAL OR RESIDENT THEREOF. IF THE INFORMATION IS OF A TYPE WHICH IS GENERALLY SOUGHT FOR A LEGITIMATE BUSINESS PURPOSE (SUCH AS DETERMINING FINANCIAL FITNESS, TECHNICAL COMPETENCE, OR PROFESSIONAL EXPERIENCE), THE INFORMATION MAY BE FURNISHED EVEN IF THE INFORMATION COULD BE USED, OR WITHOUT THE KNOWLEDGE OF THE PERSON SUPPLYING THE INFORMATION IS INTENDED TO BE USED, FOR BOYCOTT PURPOSES. SECTION 369.2(D)(4).

THE NEW CERTIFICATION REQUIREMENTS AND THE DEPARTMENT'S INTERPRETATION OF THE APPLICABILITY OF PART 369 THERETO ARE AS FOLLOWS:

A. CERTIFICATE OF ORIGIN.

A CERTIFICATE OF ORIGIN IS TO BE ISSUED BY THE SUPPLIER OR EXPORTING COMPANY AND AUTHENTICATED BY THE EXPORTING COUNTRY, ATTESTING THAT THE GOODS EXPORTED TO THE BOYCOTTING COUNTRY ARE OF PURELY INDIGENOUS ORIGIN, AND STATING THE NAME OF THE FACTORY OR THE MANUFACTURING COMPANY. TO THE EXTENT THAT THE GOODS AS DESCRIBED ON THE CERTIFICATE OF ORIGIN ARE NOT SOLELY AND EXCLUSIVELY PRODUCTS OF THEIR COUNTRY OF ORIGIN INDICATED THEREON, A
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DECLARATION MUST BE APPENDED TO THE CERTIFICATE OF ORIGIN GIVING THE NAME OF THE SUPPLIER/MANUFACTURER AND DECLARING:

"THE UNDERSIGNED DOES HEREBY DECLARE ON BEHALF OF THE ABOVE-NAMED SUPPLIER/MANUFACTURER, THAT CERTAIN PARTS OR COMPONENTS OF THE GOODS DESCRIBED IN THE ATTACHED CERTIFICATE OF ORIGIN ARE THE PRODUCTS OF SUCH COUNTRY OR COUNTRIES, OTHER THAN THE COUNTRY NAMED THEREIN AS SPECIFICALLY INDICATED HEREUNDER:

COUNTRY OF ORIGIN:

- 1.
- 2.
- 3.

PERCENTAGE OF VALUE OF PARTS OR COMPONENTS RELATIVE TO TOTAL SHIPMENT:

- 1.
- 2.
- 3.

DATED:

SWORN TO...."

INTERPRETATION.

IT IS THE DEPARTMENT'S POSITION THAT FURNISHING A POSITIVE CERTIFICATE OF ORIGIN, SUCH AS THE ONE SET OUT ABOVE, FALLS WITHIN THE EXCEPTION CONTAINED IN SECTION 369.3(B) FOR COMPLIANCE WITH THE IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY. SEE SECTION 369.3(B) AND EXAMPLES (I) AND (II) THEREUNDER.

B. SHIPPING CERTIFICATE.
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A CERTIFICATE MUST BE APPENDED TO THE BILL OF LADING STATING: (1) NAME OF VESSEL; (2) NATIONALITY OF VESSEL; AND (3) OWNER OF VESSEL, AND DECLARING:

"THE UNDERSIGNED DOES HEREBY DECLARE ON BEHALF OF THE OWNER, MASTER, OR AGENT OF THE ABOVE-NAMED VESSEL THAT SAID VESSEL IS NOT REGISTERED IN THE BOYCOTTED COUNTRY OR OWNED BY NATIONALS OR RESIDENTS OF THE BOYCOTTED COUNTRY AND WILL NOT CALL AT OR PASS THROUGH ANY BOYCOTTED COUNTRY PORT ENROUTE TO ITS BOYCOTTING COUNTRY DESTINATION.

THE UNDERSIGNED FURTHER DECLARES THAT SAID VESSEL IS OTHERWISE ELIGIBLE TO ENTER INTO THE PORTS OF THE BOYCOTTING COUNTRY IN CONFORMITY WITH ITS LAWS AND REGULATIONS....

SWORN TO...."

INTERPRETATION.

IT IS THE DEPARTMENT'S POSITION THAT FURNISHING A CERTIFICATE, SUCH AS THE ONE SET OUT ABOVE, STATING (1) THE NAME OF THE VESSEL, (2) THE NATIONALITY OF THE VESSEL, AND (3) THE OWNER OF THE VESSEL AND FURTHER DECLARING THAT THE VESSEL (1) IS NOT REGISTERED IN A BOYCOTTED COUNTRY, (2) IS NOT OWNED BY NATIONALS OR RESIDENTS OF A BOYCOTTED COUNTRY, AND (3) WILL NOT CALL AT OR PASS THROUGH A BOYCOTTED COUNTRY PORT ENROUTE TO ITS DESTINATION IN A BOYCOTTING COUNTRY FALLS WITHIN THE EXCEPTION CONTAINED IN SECTION 369.3(B) FOR COMPLIANCE WITH THE IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY. SEE SECTION 369.3(B) AND EXAMPLES (VII), (VIII), AND (IX) THEREUNDER.

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IT IS ALSO THE DEPARTMENT'S POSITION THAT THE OWNER, CHARTERER, OR MASTER OF A VESSEL MAY CERTIFY THAT THE

VESSEL IS "ELIGIBLE" OR "OTHERWISE ELIGIBLE" TO ENTER INTO THE PORTS OF A BOYCOTTING COUNTRY IN CONFORMITY WITH ITS LAWS AND REGULATIONS. FURNISHING SUCH A STATEMENT PERTAINING TO ONE'S OWN ELIGIBILITY OFFENDS NO PROHIBITION UNDER PART 369. SEE SECTION 369.2 (F), EXAMPLE (XIV).

ON THE OTHER HAND, WHERE A BOYCOTT IS IN FORCE, A DECLARATION THAT A VESSEL IS "ELIGIBLE" OR "OTHERWISE ELIGIBLE" TO ENTER THE PORTS OF THE BOYCOTTING COUNTRY NECESSARILY CONVEYS THE INFORMATION THAT THE VESSEL IS NOT BLACKLISTED OR OTHERWISE RESTRICTED FROM HAVING A BUSINESS RELATIONSHIP WITH THE BOYCOTTING COUNTRY. SEE SECTION 369.3 (B), EXAMPLES (VI),(XI) AND (XII). WHERE A PERSON OTHER THAN THE VESSEL'S OWNER,CHARTERER,OR MASTER FURNISHES SUCH A STATEMENT, THAT IS TANTAMOUNT TO HIS FURNISHING A STATEMENT THAT HE IS NOT DOING BUSINESS WITH A BLACKLISTED PERSON OR IS DOING BUSINESS ONLY WITH NON-BLACKLISTED PERSONS. THEREFORE, IT IS THE DEPARTMENT'S POSITION THAT FURNISHING SUCH A CERTIFICATION (WHICH DOES NOT REFLECT CUSTOMARY INTERNATIONAL COMMERCIAL PRACTICE) BY ANYONE OTHER THAN THE OWNER, CHARTERER, OR MASTER OF VESSEL WOULD FALL WITHIN THE PROHIBITION SET FORTH IN SECTION 369.2(D) UNLESS IT IS CLEAR FROM ALL THE FACTS AND CIRCUMSTANCES THAT THE CERTIFICATION IS NOT REQUIRED FOR A BOYCOTT REASON. SEE SECTION 369.2(D) (3) AND (4). HOWEVER, IN ACCORDANCE WITH THE EXCEPTION CONTAINED IN SECTION 369.3(B) FOR COMPLIANCE WITH THE IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY, SUCH A UNITED STATES PERSON MAY FURNISH SUCH A CERTIFICATION UNTIL JUNE 21, 1978.

C. INSURANCE CERTIFICATE.

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A CERTIFICATE MUST BE APPENDED TO THE INSURANCE POLICY STATING: (1) NAME OF INSURANCE COMPANY; (2) ADDRESS OF ITS PRINCIPAL OFFICE; AND (3) COUNTRY OF ITS INCORPORATION, AND DECLARING:

"THE UNDERSIGNED DOES HEREBY CERTIFY ON BEHALF OF THE ABOVE-NAMED INSURANCE COMPANY THAT THE SAID COMPANY HAS A DULY QUALIFIED AND APPOINTED AGENT OR REPRESENTATIVE IN THE BOYCOTTING COUNTRY WHOSE NAME AND ADDRESS APPEAR BELOW:

NAME OF AGENT/REPRESENTATIVE

ADDRESS IN THE BOYCOTTING COUNTRY

SWORN TO... "

INTERPRETATION.

IT IS THE DEPARTMENT'S POSITION THAT FURNISHING THE NAME OF THE INSURANCE COMPANY FALLS WITHIN THE EXCEPTION CONTAINED IN SECTION 369.3(B) FOR COMPLIANCE WITH THE IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY. SEE SECTION 369.3(B)(1)(V) AND EXAMPLES (V) AND (X) THEREUNDER. IN ADDITION, IT IS THE DEPARTMENT'S POSITION THAT FURNISHING A CERTIFICATE, SUCH AS THE ONE SET OUT ABOVE, STATING THE ADDRESS OF THE INSURANCE COMPANY'S PRINCIPAL OFFICE AND ITS COUNTRY OF INCORPORATION OFFENDS NO PROHIBITION UNDER PART 369 UNLESS THE UNITED STATES PERSON FURNISHING THE CERTIFICATE KNOWS OR HAS REASON TO KNOW THAT THE INFORMATION IS SOUGHT FOR THE PURPOSE OF DETERMINING THAT THE INSURANCE COMPANY IS NEITHER HEADQUARTERED NOR INCORPORATED IN A BOYCOTTED COUNTRY. SEE SECTION 369.2(D)(1)(I).

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IT IS ALSO THE DEPARTMENT'S POSITION THAT THE INSURER, HIMSELF, MAY CERTIFY THAT HE HAS A DULY QUALIFIED AND APPOINTED AGENT OR REPRESENTATIVE IN THE BOYCOTTING COUNTRY AND MAY FURNISH THE NAME AND ADDRESS OF HIS AGENT OR REPRESENTATIVE. FURNISHING SUCH A STATEMENT PERTAINING TO ONE'S OWN STATUS OFFENDS NO PROHIBITION UNDER PART 369. SEE SECTION 369.2(F), EXAMPLE (XIV).

ON THE OTHER HAND, WHERE A BOYCOTT IS IN FORCE, A DECLARATION THAT AN INSURER "HAS A DULY QUALIFIED AND APPOINTED AGENT OR REPRESENTATIVE" IN THE BOYCOTTING COUNTRY NECESSARILY CONVEYS THE INFORMATION THAT THE INSURER IS NOT BLACKLISTED OR OTHERWISE RESTRICTED FROM HAVING A BUSINESS RELATIONSHIP WITH THE BOYCOTTING COUNTRY. SEE

SECTION 369.3(B), EXAMPLE (V). THEREFORE, IT IS THE DEPARTMENT'S POSITION THAT FURNISHING SUCH A CERTIFICATION BY ANYONE OTHER THAN THE INSURER WOULD FALL WITHIN THE PROHIBITION SET FORTH IN SECTION 369.2(D) UNLESS IT IS CLEAR FROM ALL THE FACTS AND CIRCUMSTANCES THAT THE CERTIFICATION IS NOT REQUIRED FOR A BOYCOTT REASON. SEE SECTION 369.2(D)(3) AND (4). HOWEVER, IN ACCORDANCE WITH THE EXCEPTION CONTAINED IN SECTION 369.3(B) FOR COMPLIANCE WITH THE IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY, SUCH A UNITED STATES PERSON MAY FURNISH SUCH A CERTIFICATION UNTIL JUNE 21, 1978.

II. CONTRACTUAL CLAUSES.

THE NEW CONTRACTUAL REQUIREMENTS AND THE DEPARTMENT'S INTERPRETATION OF THE APPLICABILITY OF PART 369 THERETO

ARE AS FOLLOWS:

A. CONTRACTUAL CLAUSE REGARDING IMPORT LAWS OF BOYCOTTING COUNTRY.

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"IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT THE CONTRACTOR/SUPPLIER ACKNOWLEDGES THAT THE IMPORT AND CUSTOMS LAWS AND REGULATIONS OF THE BOYCOTTING COUNTRY SHALL APPLY TO THE FURNISHING AND SHIPMENT OF ANY PRODUCTS OR COMPONENTS THEREOF TO THE BOYCOTTING COUNTRY. THE CONTRACTOR/SUPPLIER SPECIFICALLY ACKNOWLEDGES THAT THE AFOREMENTIONED IMPORT AND CUSTOMS LAWS AND REGULATIONS OF THE BOYCOTTING COUNTRY PROHIBIT, AMONG OTHER THINGS, THE IMPORTATION INTO THE BOYCOTTING COUNTRY OF PRODUCTS OR COMPONENTS THEREOF: (1) ORIGINATING IN THE BOYCOTTED COUNTRY; (2) MANUFACTURED, PRODUCED OR FURNISHED BY COMPANIES ORGANIZED UNDER THE LAWS OF THE BOYCOTTED COUNTRY; AND (3) MANUFACTURED, PRODUCED OR FURNISHED BY NATIONALS OR RESIDENTS OF THE BOYCOTTED COUNTRY."

INTERPRETATION.

IT IS THE DEPARTMENT'S POSITION THAT AN AGREEMENT, SUCH AS THE ONE SET OUT IN THE FIRST SENTENCE ABOVE, THAT THE IMPORT AND CUSTOMS REQUIREMENTS OF A BOYCOTTING COUNTRY SHALL APPLY TO THE PERFORMANCE OF A CONTRACT DOES NOT, IN AND OF ITSELF, OFFEND ANY PROHIBITION UNDER PART 369. SEE SECTION 369.2(A)(5) AND EXAMPLE (III) UNDER "EXAMPLES OF AGREEMENTS TO REFUSE TO DO BUSINESS." IT IS ALSO THE DEPARTMENT'S POSITION THAT AN AGREEMENT TO COMPLY GENERALLY WITH THE IMPORT AND CUSTOMS REQUIREMENTS OF A BOYCOTTING COUNTRY DOES NOT, IN AND OF ITSELF, OFFEND ANY PROHIBITION UNDER PART 369. SEE SECTION 369.2(A)(5) AND

EXAMPLES (IV) AND (V) UNDER "EXAMPLES OF AGREEMENTS TO REFUSE TO DO BUSINESS". IN ADDITION, IT IS THE DEPARTMENT'S POSITION THAT AN AGREEMENT, SUCH AS THE ONE SET OUT IN THE SECOND SENTENCE ABOVE, TO COMPLY WITH THE BOYCOTTING COUNTRY'S IMPORT AND CUSTOMS REQUIREMENTS PROHIBITING UNCLASSIFIED

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THE IMPORTATION OF PRODUCTS OR COMPONENTS (1) ORIGINATING IN THE BOYCOTTED COUNTRY; (2) MANUFACTURED, PRODUCED, OR FURNISHED BY COMPANIES ORGANIZED UNDER THE LAWS OF THE BOYCOTTED COUNTRY; OR (3) MANUFACTURED, PRODUCED, OR FURNISHED BY NATIONALS OR RESIDENTS OF THE BOYCOTTED COUNTRY FALLS WITHIN THE EXCEPTION CONTAINED IN SECTION 369.3 (A-1) FOR COMPLIANCE WITH THE IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY. SEE SECTION 369.3 (A-1) AND EXAMPLE (II) THEREUNDER.

THE DEPARTMENT NOTES THAT, AFTER JUNE 21, 1978, A UNITED STATES PERSON MAY NOT FURNISH A NEGATIVE CERTIFICATION REGARDING THE ORIGIN OF GOODS OR THEIR COMPONENTS EVEN THOUGH THE CERTIFICATION IS FURNISHED IN RESPONSE TO THE IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF THE BOYCOTTING COUNTRY. SEE SECTION 369.3(B) AND EXAMPLES (I), (II), AND (III) THEREUNDER; AND SECTION 369.3 (A-1) AND EXAMPLE (II) THEREUNDER.

B. CONTRACTUAL CLAUSE REGARDING UNILATERAL AND SPECIFIC SELECTION.

"THE GOVERNMENT OF THE BOYCOTTING COUNTRY (OR THE FIRST PARTY), IN ITS EXCLUSIVE POWER, RESERVES ITS RIGHT TO MAKE THE FINAL UNILATERAL AND SPECIFIC SELECTION OF ANY PROPOSED CARRIERS, INSURERS, SUPPLIERS OF SERVICES TO BE PERFORMED WITHIN THE BOYCOTTING COUNTRY, OR OF SPECIFIC GOODS TO BE FURNISHED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS CONTRACT."

IT IS THE DEPARTMENT'S POSITION THAT AN AGREEMENT, SUCH AS THE ONE SET OUT ABOVE, FALLS WITHIN THE EXCEPTION CONTAINED IN SECTION 369.3(C) FOR COMPLIANCE WITH UNILATERAL SELECTIONS. HOWEVER, THE DEPARTMENT NOTES THAT WHETHER A UNITED STATES PERSON MAY SUBSEQUENTLY COMPLY OR AGREE TO COMPLY WITH ANY PARTICULAR SELECTION DEPENDS UPON UNCLASSIFIED

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WHETHER THAT SELECTION MEETS ALL THE REQUIREMENTS CONTAINED IN SECTION 369.3(C) FOR COMPLIANCE WITH UNILATERAL SELECTIONS. FOR EXAMPLE, THE PARTICULAR SELECTION MUST BE UNILATERAL AND SPECIFIC, PARTICULAR GOODS MUST BE SPECIFICALLY IDENTIFIABLE AS TO THEIR SOURCE OR ORIGIN AT

THE TIME OF THEIR ENTRY INTO THE BOYCOTTING COUNTRY,
AND ALL OTHER REQUIREMENTS CONTAINED IN SECTION 369.3(C)
MUST BE OBSERVED.

DATED: APRIL 18, 1978
STANLEY J. MARCUSS
DEPUTY ASSISTANT SECRETARY FOR TRADE REGULATION.
END TEXT. CHRISTOPHER

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